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Rupert Murdoch sets up a $12bn family trust

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Rosamond McDowell *and* Isobel Symonds *explain how using a trust to secure the succession of family businesses could be the most efficient way of passing on assets*

There are two besetting problems faced by owners of family businesses in transmitting these to the next generation. First, inheritance tax; at 40% of the value, this is a hefty bill for any business to fund. Secondly, at what point is control handed over, and to whom. It can be a challenge to find a plan for succession that is right both for family and business. There are all too many stories of how handing over control too early can lead to the destruction of both. And with multiple marriages and families, the situation can be even more complicated.

The tax position is very much helped by the availability of Business Property Relief ("BPR"), which offers 100% relief from inheritance tax on businesses that the deceased owned for at least two years before they died, and insofar as the business is not laden with investment assets. The relief applies also on the transfer of shares or a business to a lifetime trust, which would otherwise generate a charge to tax at 20%. There have been concerns over the years that successive governments will abolish or limit BPR, but these have not materialised, and as matters stand, the availability of the relief is a major boon to business owners.

Much can be achieved, with a view to an orderly succession, with appropriate drafting of the business' constitution. this way, provision can be made for the next generation (or trustees holding shares for them) to have non-voting shares to give them a stake in the business without handing over control. Another option is to issue "growth" shares to children and grandchildren, which crystallise the existing value in the business for the benefit of the current generation and ensure that the next generation only benefits from any future growth of the business - a "reap what you sow" approach to managing the hand over to the next generation.

Likewise, lifetime trusts offer unique benefits compared to leaving the business to children under a will. By setting up a discretionary trust, a gradual succession plan can be implemented over many years. The trustees would have the power to decide when and how the business or assets should be passed on, and to which beneficiary(ies), and may be useful in keeping a business together over several generations. By giving their children increasing responsibility over a long period of time, the settlor may retain overall control of their business, while the children are initiated into the responsibilities of ownership and management. Another advantage is that, in the event of a sale of the business, the BPR (which would otherwise be lost had the business been retained by the settlor, as the business assets are swapped for cash) has been "captured" on the transfer to the trust. Whilst the BPR is also lost in the hands of the trustees, there will now be substantial wealth in the trust, which is no longer chargeable in the estate of the settlor on his death.

The use of trusts to hold a family business is not without its complications. For example, the interplay between directors and shareholder trustees can be difficult, both being subject to fiduciary duties. However, these are manageable with the strategic appointment of good trustees, and with proper planning and advice.

As noted, there are many options to consider in planning for the succession of a business, but by setting up his trust, Murdoch has potentially been able to safeguard his business, and wealth, for generations to come. He has also been able to take advantage of the flexibility offered by trusts, in retaining the discretion to give his two youngest children (aged 17 and 15) a lesser beneficial entitlement in the trust compared to his four adult children.

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